

## **CERTIFICATE OF NON-CONCURRENCE**

I, Seth Carson, attorney for Plaintiff, Fabrizio Bivona, hereby certify that Plaintiff's counsel has conferred with counsel for Defendants regarding Plaintiff's request to Amend the Civil Action Complaint in connection with Defendants' Motion to Dismiss Plaintiff's Complaint. Plaintiff's counsel has sought the concurrence of counsel for Defendants. Counsel for Defendants has used this request to attempt to limit Plaintiff's rights under the Dismissal and Notice of Rights issued by the Equal Employment Opportunity Commission ("EEOC"). Plaintiff has received a Right to Sue letter from the EEOC on October 20, 2023. Therefore, Plaintiff has a right to file a lawsuit in connection with his Charge of Discrimination that was filed at the EEOC, in order to exhaust Plaintiff's administrative remedies under the Statute (Title VII). Defense counsel has conditioned its concurrence on Plaintiff agreement not to include any additional factual allegations to the Amended Complaint. Plaintiff's counsel has notified counsel for Defendants that should Defendants not agree, Plaintiff will be forced to file a new lawsuit pursuant to the Right to Sue letter and then move the Court to consolidate the two cases because they arise from the same nucleus of facts and law. This would needlessly increase the cost and time of litigation for both parties and the Court. The parties have been in discussions regarding Defendants' position since November 3, 2023. Based on Defendants' position, Plaintiff can

represent to the Court that Plaintiff has sought Defendants' concurrence and Defendants do not concur to Plaintiff's request to respond to Defendants' Motion to Dismiss by filing an Amended Complaint.

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Seth Carson

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November 26, 2023

Date